

1 SEAN C. CUNNINGHAM, Bar No. 174931
2 sean.cunningham@dlapiper.com
3 KATHRYN RILEY GRASSO, Bar No. 211187
4 kathryn.riley@dlapiper.com
5 DAVID R. KNUDSON Bar No. 265461
6 david.knudson@dlapiper.com
7 **DLA PIPER LLP (US)**
8 401 B Street, Suite 1700
9 San Diego, CA 92101-4297
10 Telephone: 619.699.2700
11 Facsimile: 619.699.2701

12 TODD S. PATTERSON (*pro hac vice*)
13 todd.patterson@dlapiper.com
14 **DLA PIPER LLP (US)**
15 401 Congress Avenue
16 Suite 2500
17 Austin, Texas 78701-3799
18 Telephone: 512.457.7000
19 Facsimile: 512.457.7001

20 Attorneys for Defendant and Counterclaim Plaintiff
21 SOPHOS INC. and Counterclaim Plaintiff SOPHOS
22 LTD.

23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 FORTINET, INC., a corporation,
27
28 Plaintiff,
29 v.

30 SOPHOS INC., a corporation, MICHAEL
31 VALENTINE, an individual, and JASON
32 CLARK, an individual,
33
34 Defendants.

35 SOPHOS INC. and SOPHOS LTD.,
36 corporations,
37
38 Counterclaim Plaintiffs,
39 v.
40 FORTINET, INC., a corporation,
41
42 Counterclaim Defendant.

CASE NO. 3:13-cv-05831-EMC-DMR

**SOPHOS'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
EXHIBITS 1, 4, 5, 6, 8, 9, 10, 31, 33, and
34 ATTACHED TO THE
DECLARATION OF SEAN C.
CUNNINGHAM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT BY DEFENDANTS
SOPHOS INC., MICHAEL
VALENTINE AND JASON CLARK.**

Pursuant to Civil L.R. 7-11 and 79-5, Defendant and Counterclaim Plaintiff Sophos Inc. and Counterclaim Plaintiff Sophos Ltd. (collectively, “Sophos”) respectfully request to file under seal confidential information in Exhibits 1, 4, 5, 6, 8, 9, 10, 31, 33, and 34 attached to the Declaration of Sean C. Cunningham in Support of Motion for Summary Judgment By Defendants Sophos Inc., Michael Valentine and Jason Clark (“Proposed Exhibits”). Specifically, Sophos requests an order granting leave to file under seal the portions of the documents listed below:

Document	Portions to Be Filed Under Seal
Fortinet’s Second Supplemental Identification of Trade Secrets (Ex. 1 to the Cunningham Decl.)	Entire Document
Expert Report of John D. Tippit (Ex. 4 to the Cunningham Decl.)	Highlighted portions at pp. 10, 15-18, 21, 25-26.
Exhibit B to the expert Report of John D. Tippit (Ex. 5 to the Cunningham Decl.)	Entire Document
Excerpt from Fortinet’s Second Supplemental Responses & Objections to Sophos’s Rogs (Nos. 3, 4, 6-8, 12-17, 19, 21, 22, and 24). (Ex. 6 to the Cunningham Decl.)	Entire Document
Excerpt from the deposition transcript of Todd Nelson, taken on June 16, 2015. (Ex. 8 to the Cunningham Decl.)	Entire Document
Expert report of Patrick F. Kennedy. (Ex. 9 to the Cunningham Decl.)	Entire Document
Expert report of Joseph A. Calandrino (Ex. 10 to the Cunningham Decl.)	Entire Document
Final Corrected Arbitration Award	Entire Document

1	(Ex. 31 to the Cunningham Decl.)	
2	Expert report of James R. Kearl	Entire Document
3	(Ex. 33 to the Cunningham Decl.)	
4	Declaration and Exhibits of Dr. Aaron Streigel	Entire Document
5	Exhibit 34 to the Cunningham Decl.	

7 **I. LEGAL STANDARD**

8 As the Ninth Circuit has explained, a showing of “good cause . . . will suffice to warrant
9 preserving the secrecy of sealed discovery material attached to non-dispositive motions[.]”
10 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (internal quotations
11 omitted). However, “[t]hose who seek to maintain the secrecy of documents attached to
12 dispositive motions must meet the high threshold of showing that ‘compelling reasons’ support
13 secrecy.

14 Because Sophos’s Motion for Summary Judgment is a dispositive motion, the
15 “compelling reasons” standard applies here. The burdens of the parties are determined by Civil
16 Local Rule 79-5, which requires that a party seeking leave to seal “establish[] that the document,
17 or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection
18 under the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also be
19 “narrowly tailored to seek sealing only of sealable material.” *Id.*

20 **II. FORTINET’S DESIGNATED CONFIDENTIAL INFORMATION**

21 As stated in the Declaration of Sean C. Cunningham, filed concurrently herewith in
22 support of this Administrative Motion, Sophos’s Proposed Exhibits 1, 4, 5, 6, 8, 9, 10, 33, and 34
23 all contain material designated by Fortinet as “Highly Confidential -- Attorneys Eyes Only” or
24 “Highly Confidential – Source Code” under the Stipulated Protective Order for Litigation
25 Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets (Dkt. No. 63).
26 Sophos expects Fortinet will file the required supporting declaration in accordance with Civil
27 Local Rule 79-5(e), as necessary, to confirm whether the information contained in the above
28 referenced documents should be sealed.

As stated in the Declaration of Sean C. Cunningham, filed concurrently herewith in support of this Administrative Motion, Sophos's Proposed excerpt to Exhibit 31 has been designated by Sophos as Highly Confidential -- Attorneys Eyes Only" under the Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets (Dkt. No. 63).

IV. CONCLUSION

DLA PIPER LLP (US)

Attorneys for Defendant and Counterclaim
Plaintiff SOPHOS INC. and Counterclaim
Plaintiff SOPHOS LTD.